

EXHIBIT 5

Educational Commission for
Foreign Medical Graduates (ECFMG)
Test Accommodations Coordinator
3624 Market Street, Philadelphia, PA 19104



June 27, 2005

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Dear Disability Services:

Disability Services

For my entire employment and academic history I feel I have never fully lived up to my true potential. Specifically, I struggle with following through on instructions, finishing projects that I start, carelessness, failing to give close attention to details, organization, and maintaining focus and concentration. I frequently lose or misplace things, and have great difficulty sitting still for long periods of time in a conventional classroom or work setting. I also have problems in my relationships, as sometimes I just tune out when being spoken to often providing no response. In contrast, I do not let the person complete what they have to say often interjecting with unrelated topics. This is what many frustrated people have told me.

It is ironic, that despite a lifetime of academic difficulty, that for fourth, fifth and sixth grade I was placed in Intellectually Gifted Classes (IGC). This was not a reflection on my great academic abilities, but rather my artistic abilities.

In first grade my teacher informed my mother that I had an innate artistic ability and encouraged her to nurture it. Based on this advice my mother searched for a Saturday art class willing to take someone so young, she succeeded and this talent was further developed over many years as a result of this instruction. Eventually I wound up teaching art at the same school while I was in High School.

Developmentally my teachers detected a problem with my speech during my grade school years. I slurred unilaterally on the left making it difficult to form "sh", "tr" and "ch" pronunciations. This was something that my mother was aware of, and I began receiving special accommodations, and was taken out of class once a week to work with a speech pathologist that the board of education provided. This extended throughout my early grade school years. My speech problem was eventually corrected. Concurrently, I was also experiencing tonic-clonic seizures that usually occurred at night while asleep, affecting the left side of my face and body. I was worked up for seizures at what is currently Rockefeller University Hospital in New York City and placed on Phenobarbital, for a number of years. I outgrew the seizures before puberty. The etiology was never truly explained but in my opinion after researching this while a medical student it was a diagnosis of Benign Rolandic Epilepsy (BRE) based on the symptoms I was experiencing at the time.

From middle school, I attended the H.S. of Art and Design in NYC, which is an art-specialized high school. I then proceeded to Parson's School of Design for undergraduate study and majored in illustration. I excelled there, and was cited with special distinction at graduation for my artistic accomplishments. It was during my sophomore year in college when my family moved to a different state, and I was pretty much left on my own to support myself financially. I was fortunate to obtain a position as a clerk in a busy level-one trauma center of a municipal hospital

in Queens, New York. I loved this energy packed environment, it appealed to me and I found it stimulating and this is how I was called to a career in medicine.

Upon completion of my BFA, I proceeded to take pre-medical course-work as a Post-Bach at the SUNY College at Old Westbury in preparation for medical school. I was able to complete the basic pre-medical pre-requisites, did not have a problem with the content of the material but struggled terribly with study skills, organization, and concentration and often had difficulty with examinations sometimes not being able to finish on time. I was granted special accommodations for exams and was given more time for examinations by the Department of Students with Disabilities. As it was felt by my family physician that my problem was secondary to test anxiety and possibly an attention-deficit disorder, but he was reluctant to start me on stimulants. My exam performance improved dramatically with the extended time. I completed my pre-medical prerequisites with a competitive G.P.A.

I then began researching foreign medical programs, as I was an older non-conventional student who did not fair that well on the MCAT. I also realized that I would be able to begin medical school immediately upon my completion of the pre-medical requirements. My application was accepted at St. Matthew's School of Medicine in Belize, Central America. I struggled in medical school not with the content or complexity of the material, but with the volume often experiencing difficulty with time management. I felt my biggest problem was with organization and often felt exhausted at attempts to get organized much less the process of extracting information and memorizing. I would fidget while in class and often would feel compelled to leave class during breaks and return home as I felt I would be more comfortable in my own environment and therefore more effective and efficient studying on my own. Although I would study very diligently, and attempted to compensate for difficulties, I feel that my problem continued to be poor academic planning and concentration difficulty.

Upon sitting for the USMLE step 1 I prepared by taking an intensive preparation course when I returned to New York, after completion of the basic sciences. I consulted a psychologist after receiving a dismal score report, and he suggested I go for psychological testing to see if a learning disorder existed, just to be sure. The facilitator administering the psychological testing revealed in her report that I was "impulsive in my responses", and "often fidgeted and was restless during testing." But did not think I qualified for a specific learning disorder.

Subsequently, I have failed USMLE step 1 five times coming so close in the later attempts, and actually going down two points after my last attempt despite hours of intensive study. I feel that with so much experience with the USMLE that I understand the culture of the exam, have a sound basic science and clinical knowledge base, but feel like my problem is the conditions of the test itself. In my recent attempts I have found myself tuning out after the first half of the exam (by the fifth block) becoming inattentive. I believe this hinders me temporally, and I find myself being beaten by the clock, I then seem to panic and get careless in my answer selections. The frustrating thing is that in reflecting back on the question after being closed out of the block, I have more than adequate knowledge base for answering the question, but frantically made a poor selection because of time constraints. I have also failed USMLE step 2 on my first attempt, and once again feel like I knew much more than what was being displayed on my score report but because of the same reasons as I outlined above have not been able to demonstrate competency on this exam either.

Recently, a close friend of mine who is a second year psychiatry resident, was doing research on ADHD and based on all of the difficulties I have been describing to him concerning a lifetime of academic difficulties was almost certain that I fit the DSMIV criteria for the ADHD diagnosis.

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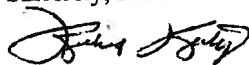
Disability Services

This was something that I considered in the past, but really did not have the insight to observe these traits in myself. I then consulted a private psychiatrist who took a careful history and based on the DSMIV concluded that I did in fact have ADHD combined type, and that I probably had it my whole life but found ways to compensate for it.

I have performed my own research after this consultation, reading books about ADHD like "*Driven to Distraction*" written by two psychiatrists with ADHD. I have discovered that this disorder often affects people with creative minds (i.e. Dustin Hoffman), and these people may be wired differently based on conventional terms in relation to societal norms, and this can be a severe handicap. These people often present with porous memories, and have difficulty in relationships because they often disregard and tune people out when spoken to, or interrupt other people when they are speaking. However, these people with ADHD also have a high degree of interpersonal *insight*. It is believed that the "disorder" provides an ability to see beneath the surface when most are oblivious, a gift that can make for an incredible physician and caretaker once the kinks of the disorder are ironed out with medication and behavioral therapy. This book was undoubtedly a summation of traits and difficulties I have been experiencing my entire life.

At this time, I am pretty much out of financial resources, and I am providing to you all of my medical/psychological reports. I have spent thousands of dollars on the USMLE, and I tell you that with great frustration, as I now have some basis or explanation for my difficulties and it has been sort of an epiphany. I am requesting extended exam time, preferably taking the exam on two separate days and additional break-time for USMLE step 2 CK and extended time to write my patient note for USMLE step 2 CS, preferably 20 minutes per encounter. I would like very much to experience some degree of success, and go on with my life as my educational and financial debt at this time is astronomical, and this only brings further pressure and anxiety as I continue to live in limbo. Please take into consideration everything that I have explained to you, and consider granting me the above testing accommodations.

Sincerely, I remain



Richard Katz

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DEFENDANTS' ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES

3a. Do YOU contend that Plaintiff did NOT document the problems he was experiencing in a writing dated July 7th, 2005 to NBME Disability Services regarding the testing conditions of the USMLE Step 1 and his subsequent failures due to his functional limitations, specifically that he was running out of time on the exam?

ANSWER:

Defendants acknowledge that on July 7, 2005, the NBME received plaintiff's letter dated June 27, 2005, (NBME/Katz 0205-0207) and took the letter into account in its evaluation of plaintiff's request for accommodations. The letter speaks for itself.